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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,180	10/16/2001	Pei K. Chang	2105.2135	7984

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,180

Applicant(s)

CHANG ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over McSweeney (4,384,005).

McSweeney discloses a composition, which can be put in water to make a beverage consisting essentially of calcium sulfate and water. The other ingredients are not seen to materially affect the composition (abstract and col. 10, lines 11-55). Claim 1 differs from the reference in the use of purified water. However, nothing new or unobvious is seen in using purified water, which is commonly used. The reference discloses that the tablet is contacted with an aqueous medium. Therefore, it would have been obvious to make a product containing water and calcium sulfate.

Claims 2 –14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McSweeney as applied to claim 1 above, and further in view of Braun et al. (4,830,862).

Claim 2 requires the use of calcium sulfate dihydrate. Braun et al. (4,830,862) discloses a beverage containing the claimed calcium compound (col. 15, lines 5-10). Therefore, it would have been obvious to use a known calcium compound in the

beverage of McSweeney because it is a commonly used type of calcium used in beverages as shown by Braun et al.

Claim 3 requires that the composition contain at least 10% of the RDV of calcium. Certainly 20 grams is within this claimed amount. Also, the daily requirement for calcium generally ranges from 400 mg to 800 mg, which is well within the claimed range as in McSweeney. Braun et al. also disclose the use of calcium sulfate (col. 15, lines 45-50). Therefore, it would have been obvious to make a beverage containing the claimed amount of calcium as shown by the combined references.

McSweeney discloses the use of acids as in claim 4, in particularly vitamin C (claim 5) which is a non-mineral supplement (col. 9, lines 20-25 and col. 10, lines 15-25). Even though vitamin C is used in a different beverage tablet, nothing is seen in adding various ingredients to the soluble acidulent tablet of ex. 4, since the compositions are basically the same. Also, Braun et al. disclose that various vitamins can be used in that composition (col. 8, lines 33-40). Therefore, it would have been obvious to use an additional nutrient in the claimed composition.

Claims 6 and 7 further require a flavor component, which can be fruit, flavor and claims 8 and 9 a preservative system. McSweeney discloses the use of lemon and lime flavor and a preservative such as acids. Acids are known to have a preserving effect. Claim 9 requires particular preservatives. Certainly, nothing new is seen in the cited preservatives some of which dissociate into acids when in solution. Therefore, it would have been obvious to substitute other known preservatives for the acids in the process of the combined references for their known preservative effect.

Claim 10 is to a method of combining the calcium drink beverage with calcium sulfate (CS) to form a solution. McSweeney discloses combining a CS with water. As above, preservatives are routinely added to any beverage that is not made shelf stable in other ways. Therefore, it would have been obvious to add preservatives.

The limitations of claims 11-14 have been disclosed above and are obvious for those reasons.

Claims 15 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-14 above, and further in view of Yang et al.

Claim 15 and 16 further require various types of pasteurization. Yang et al. disclose that it is known to use sonification and irradiation (col. 8, lines para. [0178] and page 10 para. [0256]). Therefore, it would have been obvious to use known methods of preservation in a composition containing CS.

The further limitations of claims 17-26 have been discussed above and are obvious for those reasons.

Claim 27-30 are to administering a subject the claimed beverage. The references are all for administering as they are edible (abstracts). Therefore, it would have been obvious to administer the beverage of the combined references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 8-7-03


HELEN PRATT
PRIMARY EXAMINER